

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2005

CORAM

THE HONOURABLE MR. JUSTICE K. RAVIRAJA PANDIAN
AND
THE HONOURABLE MR. JUSTICE P.P.S. JANARTHANA RAJA

T.C.NO. 244 OF 2001

The Commissioner of Income Tax
Chennai.

... Appellant

Vs.

Sri Chamundeswari
10, Muthupandiyar Avenue
Madras.

... Respondent

For Appellant : Mrs. Pushya Sitaraman
Senior Standing Counsel
for Income Tax Department

For Respondent : Mr. N. Quadir Hoseyn

O R D E R

(Order of the Court was made by P.P.S. Janarthana Raja, J.)

At the instance of the revenue, the Income Tax Appellate Tribunal referred the following question said to arise out of its order in ITA 3542 (MAD)/90, for the opinion of this Court in pursuance to the direction of this Court under Section 256(2) of the Income Tax Act.

" Whether on the facts and in the circumstances of the case and taking into account the Supreme Court's decision in 102 ITR 287 and 189 ITR 285, the Appellate Tribunal was right in law in cancelling the re-assessment made in the case for the assessment year 1980-81 ?"

2. The brief facts relating to the above reference are as under:

The assessee respondent was doing business in production and sale of cinematography films. The relevant

assessment year is 1980-81 and the corresponding accounting year ended as on 30.6.1979. The respondent assessee by his return on income, on 05.12.1980, admitted a loss of Rs.1,01,120/- and the original assessment was completed under Section 143(3) determining the loss at Rs.91,120/- on 31.03.1983. Subsequent to the completion of the assessment, the Assessing Officer noticed that the respondent assessee had filed a letter dated 19.3.1983 on 24.3.1983 in which it had offered a credit of Rs.5000/- standing in the name of Smt. Girija Pakriswamy as income of the respondent assessee and the same was omitted to be taken into consideration while completing the assessment. In view of this, the assessment was reopened under Section 147 and in its proceedings, the amount of Rs.5000/- was added to the total income of the respondent assessee. In addition, the Assessing Officer has made some other addition treating them as income from other sources. Aggrieved by this, the respondent assessee preferred an appeal to the Deputy Commissioner of Income Tax Appeals. The said Deputy Commissioner of Income Tax Appeals, was of the view that the reopening of the assessment under Section 147(b) was valid and he accordingly confirmed the order of the reassessment made by the Assessing Officer under Section 147 (b) read with Section 143 (3). Aggrieved by the said order, the respondent assessee filed an appeal to the Income Tax Appellate Tribunal and submitted that the invoking the provisions of Section 147 (b) and making reassessment was not justified. The learned Department Representative supported the order of the Deputy Commissioner of Income Tax and maintained that the same was not called for any interference. The Income Tax Appellate Tribunal held that it would not be open to the Assessing Officer to invoke the provisions of Section 147 (b) on the ground that invoking of jurisdiction under Section 147 (b) was not justified and accordingly, cancelled the reassessment made on the basis of such reopening.

3. The revenue filed a Reference Application before the Income Tax Appellate Tribunal under Section 256 (1) of the Act, requesting the Tribunal, referred the above mentioned question to this Court for its opinion. The Income Tax Appellate Tribunal rejected the Reference Application on the ground that there is no question of law arise out of the order of the Tribunal. Later, the Revenue filed a petition under Section 256 (2) of the Act, requesting this Court to give direction to the Tribunal to refer the matter to the High Court for its opinion. In pursuance of this Court Order dated 26.03.1998 in TCP 438 of 1997, the Tribunal referred the above question of law.

4. The learned counsel for the Department submitted that the assessee has filed a letter dated 19.03.1983 on 24.03.1983 in which it had offered a credit of Rs.5,000/- in the name of Smt.Girija Pakriswamy as income. The said letter was not placed by the Assessing Officer in the records or might have been misplaced and consequently it was found that the amount offered as income for the assessment was not considered. Thus, there was information from the documents that the income chargeable to tax has escaped assessment. The information that the income has escaped income tax assessment had come to the knowledge on the bare facts of the case and there was no reconsideration and change of opinion of the material on record and for this proposition, he relied on the following decisions of the Apex Court.

a) Vol.102 I.T.R. 287 (SC) (Kalyanji Mavji and Co. Vs. Commissioner of Income Tax).

b) Vol.189 I.T.R. 285 (SC) (A.L.A. Firm Vs. Commissioner of Income Tax).

5. On the other hand, the learned counsel appearing for the respondent assessee submitted that the information regarding the credit of Rs.5,000/- standing in the name of Smt.Girija Pakriswamy was available before the Assessing Officer and if the Assessing Officer due to mistake or otherwise had failed to take note of this fact while making the assessments, it was not open to the Assessing Officer to reopen the assessment under Section 147 (b). Therefore, invoking the provision of Section 147 (b) making reassessment was not justified. It is also submitted that an error discovered on a reconsideration of the same material does not give him that power and for this, he relied on the Apex Court Judgment reported in Vol.119 I.T.R. 996 (Indian and Eastern Newspaper Society Vs. Commissioner of Income Tax, New Delhi), to support his proposition.

6. We have heard the arguments advanced by both the parties. The letter dated 19th March 1983 was placed before us. The said letter was addressed to the Assessing Officer and the same was received by the Officer on 24.03.1984. The letter reads as follows:

"In the course of hearing u/s 143
(2), you doubted the genuineness of the
following loan claimed:

1. Mrs.Girija Pakkiriswamy -
Rs.5,000/-

It has to be pointed out that the former accountant appears to have made this entry without any basis. This may please be added without levy of any penalty.

Be pleased to condone."

From a reading of the above letter, it is clear that there was a hearing under Section 143 (2). At the time of hearing, the Assessing Officer doubted the genuineness of the loan claimed by the respondent assessee. This fact clearly indicates that there was enquiry at the time of original assessment proceedings. In consequence of the enquiry, the above said letter was addressed to the Assessing Officer. The only grievance by the Department was that, the said letter was omitted to consider. Hence, reopening is justified. When the enquiry is made by the Assessing Officer, the officer ought to have considered the purpose of making original assessment. He did not act upon at the time of original assessment eventhough the relevant materials were available at the time of original assessment. In consequence of the enquiry, the respondent assessee wrote a letter dated 19.3.1983 stating that the entry was made by the former Accountant without any basis and the same may be added without levy of any penalty. The said letter was filed at Page No.52 of the Miscellaneous Record of the Assessing Officer. The learned counsel for the Department did not deny that the said letter was not filed. It is filed with the Department and the same was also available at Page No.52 of the Miscellaneous Record. We have also seen the reasons recorded by the Assessing Officer for the purpose of reopening the assessment. The reason was recorded on 22.11.1984 in which it is stated that the said letter was kept separately and omitted to be considered while completing the assessment on 31.03.1983. Before even the said letter was filed by the respondent assessee, there was enquiry relating to the genuineness of the loan of Rs.5,000/- standing in the name of Mrs.Girija Pakriswamy and the Assessment Officer did not proceed further. After the completion of the assessment, the Officer cannot rely on the fact that they have omitted to consider the said letter which was kept in different file.

7. We are of the view that the information pertaining to the cash credit of Rs.5,000/- was already with the Asuming Officer at the time he made the original

assessment and there is no fresh information available with the assessing Officer enabling him to invoke the provision under Section 147 (b) and as such, reopening of assessment under Section 147 was unjustified.

8. In view of the said factual position, we have answered the above question in favour of the assessee and the above tax case filed by the revenue is dismissed. No costs.

kb/km

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
The Assistant Registrar
Income-tax Appellate Tribunal
A3 Rajaji Bharna, Besant Nagar
Madras

2. The Commissioner of Income-tax, madras

3. The Assistant Commissioner of Income tax
Central Circle I (4) Madras

4. The Assistant Commissioner of Income tax
Central Circle I (V) Madras

+ one cc to Mr. Pushya Sitaraman, Sc for Income tax
Department

+ one cc to Mr. Quadir Hoseyn, Advocate sr no. 49352

KMCO)
NM(23.12.2005)

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